

DRAFT

## Zoning By-law Committee Meeting Minutes (VIA ZOOM)

March 24, 2021

*Committee Members Present: Bernard Greene, John VanScoyoc, Roger Blood, Mark Zarrillo, Cliff Brown, Daniel Saltzman, Jesse Geller, Johanna Schneider, Ken Goldstein, Linda Hamlin, Linda Pehlke, Lynda Roseman, Paul Saner, Paula Friedman, Phil Hresko [Carla Benka Absent]*

*Staff present: Alison Steinfeld, Polly Selkoe, Maria Morelli, Victor Panak, Karen Chavez*

*Petitioners Present: Roger Blood, Kathleen Scanlon and Lisa Cunningham*

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Chair Bernard Greene opened the hearing with a discussion about when the ZBLC would meet again to continue discussion and deliberation on articles not discussed tonight. The continued virtual hearing was scheduled for 3/31/21 at 7 pm. for discussion of Art. 30 (Outdoor Seating), Art. 21 (Micro- and Age Restricted Units), and Art. 14-17 (Short Term Rentals).

### **ARTICLE 23 - AMEND SEC. 4.08 OF THE ZONING BY-LAW RELATED TO AFFORDABLE HOUSING REQUIREMENTS (Blood)**

Petitioner Roger Blood provided context for the Article and how it will continue to strengthen the Affordable Housing regulations, including:

1. The need for the Town's By-law to determine how affordable rents are aligned to household and bedroom count. HAB expects to see the Town's definition of affordable housing aligned with their definition in order to get the number of units qualified in 40B inventory.
2. Targeting of the household income ranges that will qualify under the by-law.

Bernard Greene asked for thoughts and comments.

Roger Blood answered several questions from the Committee.

Pehlke: Does the developer have the flexibility to choose affordable housing?

Blood: They have the alternative to do 100/120% by paying a substantial fee to the trust fund.

Pehlke: Can we write this in a way that does not allow SHI units until we are over the 10%?

Cliff Brown: How long can we stay above the 10%? If we put a regime that lowers the rental range, then aren't you creating an incentive for developers to wait until we are below the 10%. I don't understand how the economics are going to work here. There are no numbers to back up the logic behind the thinking.

Blood: It is a temporary situation. There is very little chance that we will go below 10% again.

Greene: By lowering the base income range, does that dis-incentivize building middle income housing?

Blood: No, developers will look at different markets.

Brown: It is hard to evaluate without numbers, for something that is numerically-based.

*(It was requested that numerical data be distributed to all members and it was agreed they would be.)*

Pehlke: I cannot vote on this. Why is this necessary now?

Blood: We will go over 10% soon and there will be no restrictive income. This establishes ranges with a cap. Nothing would be SHI-eligible without this article.

Paula Friedman: Wants clarification because it feels like a paradox. Affordable housing may increase by a little, but the cost gets shifted to everyone else (owners & tenants).

Blood: By strengthening the by-law, we are asking a greater financial cost to the developer.

Greene: Are you putting pressure on the market-rate housing stock? This would be a negative consequence. It would undermine effort to provide housing for middle-income people.

Blood: Does not think that this will push developers to create luxury housing.

Bernard Greene moved for favorable action; motion seconded.

Greene: Abstain

VanScoyac: Yes

Benks: Not Present

Blood: Yes

Brown: Abstain

Friedman: Abstain

Geller: Abstain

Goldstein: Yes

Hamlin: Yes

Hreskol: Yes

Pehlke: Abstain

Roseman: Yes

Saner: Yes

Schneider: Yes

Zarrillo: Yes

Saltzman: Yes

TOTAL: YES → 10

NO → 0

ABSTAIN → 5

ABSENT → 1

**ARTICLE 20 – AMEND THE ZONING BY-LAW TO CONFORM TO AMENDED STATE REGULATIONS ON MARIJUANA COURIERS AND DELIVERY OPERATORS**

Petitioner is the Planning Department.

Presentation by Maria Morelli, Senior Planner.

Morell explained the two new definitions for Marijuana deliveries/couriers; they need to be located in the host city.

There was a discussion about parking and loading requirements for these businesses?

Morelli: Marijuana retailers are expected to partner with couriers.

Saltzman: The more we migrate the purchase of marijuana to delivery, the better. This reduces impacts on the neighborhood. NETA is an example of the impacts.

Paul Saner: The use is limited to the “I” and “O” zones - do we really want social empowerment at these locations with this? Why are we limiting the use to areas in town that we are trying to up-zone rather than encumbering them?

Morelli: There is not enough capacity (for parking) in other zones. Due to the currently limited scope, we cannot expand the scope [of Article], but there is room for future expansion.

Ken Goldstein: Why is medical marijuana deleted?

Morelli: The CCC updated language. We still have medical treatment center use; it’s just in the old language.

Goldstein: If there is only delivery of marijuana, Brookline would lose out because there is not enough space for parking. If we want to obtain the taxes that are available, then retail should be the dominant form of delivery.

John VanScoyoc: There could be 4 couriers, 4 delivery, and 4 retailers?

Morelli: Yes

VanScoyoc: Since couriers tend to be individuals that do this as part time job to add income to household, does that benefit the local business/entrepreneur?

Morelli: CCC regulates delivery types and has criteria for the benefits.

Saltzman: All we want is the tax revenue. Why do we care if people get marijuana at a retailer or by delivery?

Morelli: Marijuana Delivery does not pose a threat to the brick and mortar retailers.

Pehlke: Delivery has an expensive delivery and purchase fee. Are women included in the social equity?

Morelli: There is no parking requirement for couriers. Yes, women are included.

Friedman: How do we get the tax revenue?

Morelli: The warehouse must be in the host community.

Friedman: Can we impose a tax even when distributing outside of Brookline?

Morelli: No, this is determined by state.

Brown: What happens if sales happen outside of building, is there increase in crime?

Morelli: No police detail required with the courier. Retailers do have security. Many Town departments have to review licenses, and police concerns can be addressed through this review.

Roseman: Are there facilities like this in other communities? What are other's experiences?

Morelli: Since there are limited communities with similar experience, the more conservative approach was taken.

Saltzman: We should encourage this type of use.

Pelke: What are the amendments that Maria would make?

Morelli: Remove A and B, and move the other subsections up.

Bernard Greene moved approval of sections A and B, and adding language requiring one loading space. Seconded by Dan Saltzman.

Bernard Greene: Yes

John VanScoyac: Yes

Benka: *Not Present*

Blood: Yes

Brown: Yes

Paula Friedman: No

Geller: Yes

Goldstein: Yes

Hamlin: Yes

Phil Hresko: Yes

Pehlke: Yes

Roseman: Yes

Paul Saner: No

Schneider: Yes

Zarrillo: Yes

Saltzman: Yes

TOTAL: YES → 13

NO → 2

ABSTAIN → 0

ABSENT → 1

Greene moved favorable action on Article 20 as amended.

Greene: Yes

Van Scoyac: Yes

*Benka: Not present*

Blood: Yes

Brown: Yes

Friedman: No

Geller: Yes

*Goldstein: Not present (for discussion and voting)*

Hamlin: Yes

Phil Hresko: Yes

Pehlke: Yes

Roseman: Yes

Saner: No

Schneider: Yes

Zarrillo: Yes

Saltzman: Yes

TOTAL: YES → 12

NO → 2

ABSTAIN → 0

ABSENT → 2

PUBLIC COMMENT: None

**ARTICLE 25: – AMEND SEC 5.06 AND 2.06 OF THE ZONING BY-LAW TO REQUIRE NEW BUILDINGS IN THE EMERALD ISLAND SPECIAL DISTRICT TO BE FOSSIL FUEL FREE**

There was a presentation by Representative Tommy Vitolo on what the state is doing to further sustainability. Municipalities can opt into the code if adopted by the state. Net zero language does not need to be net zero for all types of uses. If bill is passed it could be several years before regulations are implemented. Fossil Fuel Free and Net Zero are similar but not the same.

**Petitioner Kathleen Scanlon** provided a PowerPoint presentation. FFF means no onsite combustion of fossil fuels (oil or gas) in supporting operations of a building.

Pehlke: When we did the Emerald Island Overlay Zone, why was “certifiable” required but not certified.

Lisa Cunningham: Certifiable is used because you cannot be “certified” until a building has a C of O.

Roger Blood moved favorable action on Art. 25; seconded by Goldstein

Benkla: *Not Present*

Blood: Yes

Brown: Yes

Friedman: Yes

Geller: Yes

Goldstein: Yes

Hamlin: Yes

Hresko: Abstain

Pehlke: Yes

Roseman: Yes

Paul: Yes

Schneider: Abstain

Zarrillo: Abstain

Saltzman: Yes

TOTAL: YES → 12

NO → 0

ABSTAIN → 3

ABSENT → 1

**ARTICLE 26 – AMEND THE ZONING BY-LAW TO INCENTIVIZE FOSSIL FUEL FREE INFRASTRUCTURE IN NEW CONSTRUCTION AND SIGNIFICANT REHABILITATION OF BUILDINGS BY SPECIAL PERMIT**

Jesse Gray presented the article and made the argument for FFF incentivization through Special Permits.

Linda Hamlin: Does not understand how it is called incentivizing? It seems more like a burden. There has not been a larger discussion with homeowners, and what this means for them.

Cunningham: This warrant article only covers major construction and new construction. It is very difficult to hit a 75% threshold through residential rehabilitation.

Mark Zarrillo: Supports Net Zero, but he is not on board with this Article. How does this not cause structures to not be nonconforming? It does not fit the mold for what appears to be legal at the moment. What does 75% mean – what is the threshold? How can you put a caveat on a 40B project?

Attny. Raymond Miyares: addressed questions from a legal standpoint. This does not have to be tied to a specific owner.

Werner Lohe, a proponent of the Article - The purpose of zoning is to have the type of community you want, and this is the best approach for addressing climate change.

Daniel Saltzman: Does the new purchaser of a house have knowledge of this Article, and does this mean that fossil fuels will be removed in 2030?

Miyares: It is a possibility that someone who does not comply will be required to go in front of a judge.

Zarrillo: After the permit expires, it becomes a nonconforming use? Special Permits were originally considered as special circumstances in consideration of the by-laws (cause-and-effect). But if there is nothing in the by-law that identifies a cause-and-effect, then building becomes nonconforming.

Blood: Does FFF determine materials and method of construction?

Zarrillo: There is nothing in the by-law that requires certain types of materials and methods of construction.

Pehkle: The proposed article is questionable legally, if legal at all. It is turning the purpose of a Special Permit on its head. A positive is that it does not incentivize demolitions. Do we really want Brookline to be a complete outlier from the State Building code? This is a disadvantage in terms of competing for development.

Brown: Why was there no effort in creating an economic incentive in order to be FFF? You are not giving people the choice.

Cunningham: This is narrowing the number of projects affected. This is cost-effective – true for new construction and renovation. The resale value and the rental value is increased.

Pehkle: It's the method and process that is the problem.

Ken Goldstein: Is this Article unnecessarily complicated?

Daniel Saltzman: Has an issue with the legal ramifications. Supports FFF, but does not understand what will happen in 2030.

Zarrillo: Suggested to board members to read the Planning Department report.

Gray: The Article was drafted carefully, and he suggests working with the board members in developing a "better" article in order to address the issue quickly. You need to break precedent in order to solve the major problem of climate change.

Cliff Brown moved favorable action on this article, seconded by Paula Friedman.

Greene: Abstain

VanScoyoc: Yes

Benka: Not present

Blood: Yes

Brown: Abstain

Friedman: Yes

Geller: No

Goldstein: Yes

Hamlin: No

Hresko: No

Pehkle: Abstain

Roseman: Abstain

Saner: Abstain  
Schneider: No  
Zarrillo: No  
Saltzman: Abstain

TOTAL: YES →4

NO → 5

ABSTAIN →6

ABSENT → 1

No Public Comments.

Greene continued the hearing until 3/31/21 at 7 pm.

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